HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 16916 of 2000

Dated 13th June, 2007

Between

Veermreddy Gopalakrishna

…Petitioner

and

The Agent to the Government, EG District, Kakinada
and ors

…Respondents.

HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No.16916 of 2000

ORDER:

In this Writ Petition, the petitioner has questioned the order of eviction dated 30-1-1999 passed by the Special Deputy Collector, Tribal Welfare, Rampachodavaram, East Godavari District, and, the order of the appellate authority, dated 24-8-2000 passed in CMA.No. 31 of 1999, confirming the order dated 30-1-1999.

The facts in brief are as follows: The Special Deputy Collector, second respondent herein, had initiated proceedings under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1959 on the complaint filed by the Special Deputy Tahsildar, Tribal Welfare, Addategala, stating that the fifth respondent

herein is in possession of the land to an extent of Ac.4.14 cents covered by Sy.No. 46 of Kimmuru village in contravention of the Regulations. As per the revenue records and Adangals for the year 1996-97, the patta in respect of the said land stands in the name of the father of the petitioner. After initiation of the proceedings, when notice was issued to the fifth respondent, she had deposed that she is not in possession of the petition schedule property. However, it appears that a report was called from the Mandal Revenue Officer, Addateegala, who had confirmed the possession of the subject land by the fifth respondent. Basing on the same, the second respondent had passed impugned order of eviction, without impleading the petitioner as party to the proceedings. As against the same, the petitioner preferred appeal and the appellate authority had simply confirmed the finding of the primary authority by recording a finding that the land in question was sold to the fifth respondent orally.

In the affidavit filed in support of the Writ Petition, it is stated that the land in Sy.No.46 of Kimmuru village, Addateegala Mandal originally belonged to the joint family of the late father of the petitioner. It is stated that the said land had fallen to the share of the father of the petitioner in the registered partition deed dated 19-10-1957 and in view of the Will executed by the late father of the petitioner on 20-6-1972, the petitioner had succeeded to the property. It is the case of the petitioner that he is the owner and possessor the land in question and in spite of the same, eviction orders were passed with regard to the above said land without even impleading him as party in the proceedings initiated against the fifth respondent. It is submitted that there was no transfer at all in favour of the fifth respondent and the Order passed by the Special Deputy Collector, as confirmed by the

appellate authority is without jurisdiction, as much as the object of the Regulation is only to interdict the transfers being made contrary to the Regulations. It is further submitted that in any event no order could have been passed without giving opportunity to the petitioner.

Though the Writ Petition was admitted as early as on 12-9-2000 and interim orders were passed directing to maintain status quo, no counter affidavit is filed controverting the allegations of the petitioner.

A perusal of the order passed by the Special Deputy Collector indicates that the land in question stood in the name of the Pattadars, Veeramreddy Appalaraju and his two brothers, who are not tribals. It is stated that in view of the Will executed by the father of the petitioner, pattadar passbook was issued in favour of the petitioner showing him as pattadar and owner of the land in question. On initiation of the proceedings, it was deposed by the fifth respondent herein to the effect that she is not enjoying the property, and in that view of the matter, at least, the respondents ought to have notified the pattadars before passing the order of eviction. It is the case of the petitioner that there is no transfer in favour of the fifth respondent at all. It is not disputed that there is no document showing transfer of the land infavour of the fifth respondent. Further, a reading of the order of the Special Deputy Collector, Tribal Welfare, indicates that the order of eviction was passed solely based on the report of the Mandal Revenue Officer, in which, he had stated that the fifth respondent herein is in possession of the property. As much as the ownership of the land was registered in the name of the petitioner, the order of eviction could not have been passed without impleading and giving opportunity to the petitioner, who claims to have derived title over the subject land by virtue of the Will executed by his father. Even the appellate authority did not

consider the appeal in proper perspective and merely by recording a finding that the subject property was sold orally to the fifth respondent, it had confirmed the order of the primary authority. As much as it is the case of the petitioner that the land in question devolved upon him by virtue of the Will executed by his late father and he was not made party to the proceedings initiated by the Special Deputy Collector, Tribal Welfare and was not afforded any opportunity of hearing, and in absence of counter affidavit controverting the allegations of the petitioner, I deem it appropriate that it is a fit case to set aside the orders passed by the primary authority as well as the appellate authority and to provide opportunity to the petitioner. Accordingly, the order dated 30-1-1999 passed by the Special Deputy Collector, Tribal Welfare, Rampachodavaram, East Godavari District, and, the order of the appellate authority, dated 24-8-2000 passed in CMA.No. 31 of 1999 are set aside and the matter is remitted back to the second respondent. The second respondent shall consider the matter afresh by giving opportunity to the petitioner and examine whether there was transfer of the land in violation of the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1959, and, pass appropriate orders in the matter.

The Writ Petition is allowed to the extent indicated above. No order as tocosts.

JUSTICE R. SUBHASH REDDY

DATED:13-6-2007.
Msnr.